

Central Oregon Coast Board of Realtors-Government Affairs Mid-Year Report 2021

Brought to you by COCBR State Director Crystell Wise & GAD Betsy Schultz

The 2021 legislative session is coming to a close this month. Your Oregon REALTORS lobby team has worked hard for you and we can feel very good about not only our representation with the legislators but also the member responses to the Calls for Action that OR sent out.

I could write a massive report on all the housing related bills that have been on our radar this year, but I'll keep this relatively brief. One of the bills OR was monitoring closely was HB5034, the Oregon Real Estate Agency Budget. The bill contains an appropriation of over \$9.5 million for the agency over the next two years. (See below for a breakdown of that budget).

Senate Bill 282A, was the latest bill affecting the landlord/tenant relationship in Oregon, overcame its final legislative hurdle when it passed the House on a vote of 39-17 on May 11. The Association opposed the bill and supported the efforts of some members of the House Housing Committee (including REALTOR® Representative Jack Zika from Redmond/Bend) to amend the bill and make it less onerous to landlords who have already been required to shoulder a significant societal burden throughout the COVID-19 pandemic and government-declared state of emergency. (See details below)

SB 391A would allow counties statewide to allow owners of rural residential-zones property to construct one accessory dwelling unit on their lot or parcel, subject to certain restrictions. The bill allows existing rural residential-zones properties to be used more efficiently. It requires accessory dwelling units to be located within 100 feet of the primary dwelling on the property, limits the size of the accessory dwelling unit to 900 square feet of usable area, and specifies that counties may not allow accessory dwelling units allowed under the bill to be used for vacation occupancy. This bill has passed the Senate and should move to the House floor soon.

HB 2550A is supported by the House Speaker and was always going to be on a glide path to becoming law this session. The bill will require seller's agents to redact or withhold communication between the buyer and seller to avoid the selection of a buyer based on Federal protected class as defined within the Fair Housing Act. Customary real estate transaction documents, including photographs, may still be communicated between buyer and seller. This bill aligns with the [National Association of REALTORS® guidance](#) on so-called "love letters" and Oregon will be the first state to add this requirement to state laws affecting the conduct of real estate licensees. The Association will be providing guidance regarding compliance with the new law once it is signed by the Governor.

- HB 2550 A passed the House unanimously on April 15 and has been carefully amended by the Association to minimize the potential for REALTORS® to have difficulty complying with the new law. It will be voted on in the Senate Committee on Housing and Development on May 25 and will then proceed to the Senate Floor for a final vote. It will become operative 91 days after the Legislature officially adjourns.

Finally, **SB 852** remains the highest priority bill the Association opposes this session. Because SB 852 is assigned to the Senate Committee on Finance and Revenue, it will remain alive through the end of session. At its last public hearing on May 13, The Association and a coalition of partners testified in opposition to the bill. The Association opposes the bill, which would eliminate Oregon's Mortgage

Interest Deduction (MID) for over 90,000 Oregonians on their primary residences, eliminate the subsidy entirely for second homes, and implement a needlessly complex income-based test that would determine which Oregon homeowners could deduct the interest paid on their mortgages from their state income taxes.

OR directors have worked hard this session, showing up virtually to testify, reviewing countless bills through the lens of the state association, and generally making sure that your interests are represented in Salem. This was a tough year, with very little access to the legislative process. I am looking forward to hopefully being back in the capitol soon, and being able to continue our efforts in person to help educate legislators on the true barriers to housing affordability and the American Dream.

Details on some of the bills:

- HB 5034 contains an appropriation of up to \$9,515,923.00 to the OREA for the 2021-2023 biennium.
 - The emerging issue cited in their Department of Administrative Services report to the Committee on the budget is “continued modernization to increase online access to services.”
 - In the Agency’s presentation, they include Goals for the biennium:
 - Prioritizing Diversity, Equity & Inclusion and Supporting Fair Housing Efforts
 - Reduce barriers to licensure for those with limited English proficiency
 - Explore Spanish language exam
 - Translate publications in Spanish
 - Coordinate better with BOLI
 - Serve on ARELLO Fair Housing Committee
 - Memorialize & Improve Upon Efficiencies Gained in Telework
 - Online payments
 - Condominium filings
 - Complaint intake, case workflow, and storage
 - Zoom interviews, settlement conferences, and hearings
 - Electronic signatures
 - E-License System Replacement Planning
 - Possible Considerations for the Future
 - Agents’ Duties & Responsibilities
 - Fiduciary responsibilities of broker to consumer
 - Disclosure Pamphlet
 - Required at first contact
 - Clarifies responsibilities
 - No written acknowledgement required
 - Commission Sharing
 - Oregon prohibits rebates to consumers
 - Considered sharing commission with non-licensed persons
 - Currently subject to lawsuit
 - Licensing Portability

- o Interest of ARELLO
- Mandatory E&O
 - o Consumer protection
 - o Exists in 30% of US/Canada jurisdictions
- Property Management Bonding
 - o Similar to escrow agent requirement
 - o Possible burden on small businesses

SB 282A extends the expiration of the “grace period” for repayment of residential rent, charges and fees accrued during the COVID-19 emergency period from June 30, 2021 to February 28, 2022. It also permanently prohibits landlords from reporting tenant nonpayment accrued during the emergency period (April 1, 2020 to June 30, 2021) to consumer credit reporting agencies. Importantly, this bill did **not** extend the ban on evictions for nonpayment of rent, which remains in place until June 30, 2021. On or after July 1, nonpayment of July, August, etc. rent will again be grounds for termination of a tenancy, and tenants may be served with a 10-day termination notice in accordance with [ORS 90.394](#). However, that notice must clearly state that:

- i. Eviction for nonpayment of rent, charges and fees that accrued on or after April 1, 2020 and before June 30, 2021 is not allowed before February 28, 2022; and
 - ii. Information regarding tenant resources is available at www.211info.org.
- b. Additionally, landlords must continue to follow the revised “order of payments,” rules that have been in place under the eviction moratorium. When landlords receive payments from tenants, they must apply them in this order:
- i. Rent for the current rental period,
 - ii. Utility or service charges,
 - iii. Late rent payment charges, and
 - iv. Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to damage claims or other claims against the tenant.
- c. During the grace period (extended to February 28, 2022 under the bill) landlords can communicate with their tenant about the unpaid balances that accrued between April 1, 2020 and June 30, 2021, but if a landlord does so the landlord must also include a statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020 to June 30, 2021, is not allowed before February 28, 2022. The notice may also include information regarding tenant resources and may offer a voluntary payment plan for the nonpayment balance, but only if the notice states that the plan is voluntary. The notice may include a request that the tenant contact the landlord to discuss the voluntary payment plan.

What else does it do?

- a. SB 282A prohibits a landlord from considering tenant nonpayment accrued on or after April 1, 2020 and before March 1, 2022, or any eviction that occurred during that period, when evaluating rental applications. Additionally, the bill extends an increased penalty for retaliatory conduct on the part of a landlord through February 28, 2022. The increased retaliation penalties include payment of up to three

months' rent or three times the actual damage sustained by the tenant. The bill also prohibits, until March 1, 2022, landlords from enforcing restrictions on maximum occupancy limits for their property that are lower than required by federal, state, or local law, or from limiting the maximum duration of a guest's stay. With this change, the bill expressly allows a landlord to require their tenant and the tenant's guest(s) to sign a temporary occupancy agreement for stays longer than 15 days and allows for the screening of tenants' guest(s) based on a landlord's ordinary screening criteria, except for criteria related to credit reports, references, or income. Finally, the bill clarifies that landlords may assess a fee allowed by ORS 90.302 or terminate a tenancy based on the conduct of a tenants' guest(s) or guests' failure to comply with conduct standards or the signing of the temporary occupancy agreement. The bill clarifies that guests who sign a temporary occupancy agreement are not tenants under the law.

When does SB 282A go into effect?

- a. The bill contained an "emergency clause" which means it becomes law as soon as it is signed by the Governor. It should be considered in effect as of May 14, 2021.

SB852:

- SB 852 is technically flawed. The Department of Revenue went on the record with a letter stating they have no way to estimate how much the Mortgage Interest Deduction costs the state and have them use that guess to divert money from the general fund. Revenue that would be realized under the bill would be general fund money, and can be spent any way the legislature sees fit. This nullifies the bill's stated creation of an Oregon Housing Opportunity Account.
- On the policy side, once the precedent is set that the state will eliminate the Mortgage Interest Deduction for some, the legislature will return and lower the threshold every time a new need is identified. There is already a bill in the House that sets the threshold at \$100,000, lower than the \$200,000 proposed in SB 852.
- As for the intended purposes of the bill for rental assistance, down payment assistance and homelessness programs, the real estate document recording fee generates almost \$75 million per biennium. That is entirely paid by home buyers and those that are refinancing their homes.
- The Association would have readily supported the bill's proponents if they had come to the table with a proposal arguing for general fund assistance for housing programs. Instead, the drafters chose to focus on making housing less affordable for a subset of Oregonians.
- SB 852 would impact 12% of filers who actually utilize the MID, rather than the 5% number the proponents have led with.
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